

# In the Indiana Supreme Court



STATE OF INDIANA ex rel.	)	Supreme Court No.
Michael G. HAYS,	)	62S00-1202-OR-103
Relator,	)	
	)	
v.	)	
	)	
THE PERRY CIRCUIT COURT and	)	Trial Court Nos.
THE HON. LUCY GOFFINET, As Judge	)	62C01-1111-PO-579
Thereof,	)	62C01-1201-RS-22
Respondents.	)	62C01-1201-DR-23

## ORDER

Relator, Michael G. Hays, by counsel, has filed a petition for a writ of mandamus and prohibition seeking relief against Respondents, the Perry Circuit Court and the Honorable Lucy Goffinet, as Judge thereof. Relator seeks a writ that would (1) enjoin Respondents from making further rulings in the three cases whose trial court cause numbers are listed in the caption of this order; and (2) require Respondents to transfer, pursuant to Indiana's version of the Uniform Child Custody Jurisdiction Act ("UCCJA"), all issues in those cases so that they may be heard in Wisconsin in the Douglas County Circuit Court, where a child custody case involving the same parties is pending.

Each member of the Court has had an opportunity to review and consider the materials filed in this original action. A majority of the Court has voted to deny the writ for the following reasons.

A writ of mandamus or prohibition is an extraordinary remedy, equitable in nature and viewed with disfavor. State ex rel. Woodford v. Marion Super. Ct., 655 N.E.2d 65 (Ind. 1995). Such writs will be issued only where the lower court has an absolute duty to act or refrain from acting. State ex rel. City of New Haven v. Allen Super. Ct., 699 N.E.2d 1134, 1136 (Ind. 1998). To obtain relief, a relator must show, among other things, that he raised the jurisdictional question by written motion in the lower court and that the court either denied the motion or failed to rule timely on it. *See* Ind. Original Action Rule 3(A)(4).

Relator's central claim is that IC § 31-21-5-6, part of Indiana's version of the UCCJA, "mandates that absent an emergency, an Indiana trial court may not exercise jurisdiction over a child custody matter that is before a court in another state unless that state [h]as terminated or stayed the proceedings, neither of which has happened" here. (Pet. at 4.) Relator argues that this statute and IC § 34-26-5-6(4), part of Indiana's Civil Protection Order Act, require that the cases be transferred to the Wisconsin court.

However, an Indiana court hearing a child-related case covered by the UCCJA is not divested of jurisdiction merely because a case involving the child is pending in another state's court. The UCCJA requires an Indiana court to defer to another state's court under some circumstances when the court of that other state has "jurisdiction substantially in accordance with this article." IC § 31-21-5-6. To assist in sorting out whether one or more courts have such jurisdiction, the UCCJA contemplates communication between the courts of the two states and the Indiana court's "examin[ation of] the court documents and other information supplied by the parties under sections 10 through 13 of this chapter." IC § 31-21-5-6(b).

Relator fails to demonstrate that Respondents have violated the statutes he cites. The record shows that Respondents received some correspondence from the Wisconsin court and Relator's motion to dismiss or transfer the Indiana cases to Wisconsin. At the hearing on January 20, 2012, Respondents acknowledged that there is a dispute over jurisdiction, commented that it appears preliminarily that Wisconsin is the home state of one child and Indiana is the home state of the two other children, and stated the Respondents would need to consult with the Wisconsin court before making "a decision regarding the home state." (Supplemental Record at 12-16, 18.) Respondents also set the question of jurisdiction for a hearing on February 24, 2012. Respondents might have heard evidence and argument on that day (and potentially ruled on Relator's motion). But on February 21, 2012, Relator asked that the hearing be stayed pending the resolution of this original action, and Respondents apparently granted that stay. In any event, with this original action now concluded by denial of the writ, Respondents can promptly hold a hearing and address the jurisdictional question.

Relator's other noteworthy claim is that Respondents exceeded their jurisdiction by allowing registration of the parties' Wyoming divorce decree. He claims the UCCJA "prohibits the registration of a foreign decree if another court has jurisdiction. IC § 31-21-6-5." (Relator's Br. at 9-10.) But this statute addresses *post*-registration challenges to the validity of a registered order, and Relator does not explain how it precludes registration in the first instance. *See* IC § 31-21-6-5.

Accordingly, the Court DENIES the Relator's petition for writ of mandamus and prohibition. Motions to reconsider or petitions for rehearing are not allowed. Ind. Original Action Rule 5(C).

The Clerk is directed to send copies of this order to the Hon. Lucy Goffinet, Perry Circuit Court; to the clerk of the Perry Circuit Court; and to all counsel of record. The Clerk is further directed to post a copy of this order to the Court's website.

Done at Indianapolis, Indiana, this 16<sup>th</sup> day of March, 2012.

Randall T. Shepard  
Acting Chief Justice of Indiana

Shepard, Dickson, and Sullivan, JJ., vote to deny the writ.

Rucker and David, JJ., vote to grant the writ.

Sullivan, J., and Shepard, C.J., concurring in the order denying the writ.

As the parties' submissions seem to make clear that Wisconsin is not and has never been the home state of two of the children, it may be that the Wisconsin court is not exercising jurisdiction "substantially in accordance with" the UCCJA, regarding those two children. *See* I.C. § 31-21-5-6; *see also* I.C. § 31-21-2-8 (defining "home state"). For this reason, I agree that the Indiana court should hear evidence and argument on whether the Wisconsin action, though filed before the ones in Perry Circuit Court, is not one "substantially in accordance with" the UCCJA.